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Attorneys for Plaintiffs F.B.T. Productions, LLC and Em2M, LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

F.B.T. PRODUCTIONS, LLC, et al.,

Plaintiffs,

V.

**AFTERMATH RECORDS doing
business as AFTERMATH
ENTERTAINMENT, et al.,**

Defendants.

Case: 5:08-mc-80040-RMW (PVT)
[Related to Case: CV 07-03314 PSG
(MANx)]

**DECLARATION OF EUGENE R.
LONG, JR. IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
MOTION FOR PROTECTIVE
ORDER TO QUASH "APEX"
DEPOSITION SUBPOENA**

[Opposition to Motion; Objections to evidence; and Exhibits filed concurrently herewith]

1)	DISCOVERY MATTER
2)	
3)	JURY DEMAND
4)	
5)	Date: April 29, 2008
6)	Time: 10:00 a.m.
)	Courtroom: 5
)	Hon. Patricia Trumbull

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1 **DECLARATION OF EUGENE R. LONG, JR.**

2 I, Eugene R. Long, Jr., declare as follows:

3
4 1. I am an attorney at law duly licensed to practice before all of the courts in the
5 State of California. I am an associate with the law firm of King & Ballow, counsel of
6 record for Plaintiffs F.B.T. Productions, LLC ("F.B.T.") and Em2M, LLC ("Em2M")
7 (collectively, "Plaintiffs") in this action. I have personal knowledge of the facts set
8 forth in this Declaration and, if called as a witness, could and would testify
9 competently to such facts under oath.
10

11
12 2. A true correct and copy of the Plaintiffs' First Amended Complaint is attached to
13 this declaration as **Exhibit A**.

14
15 3. A true and correct copy of the essay authored by Steve Jobs entitled "Thoughts
16 on Music," which appeared online at www.apple.com/hotnews/thoughtsonmusic, is
17 attached to this declaration as **Exhibit B**.

18
19 4. A true and correct copy of the deposition subpoena that was served on Steve
20 Jobs on March 3, 2008 is attached to this declaration as **Exhibit C**.

21
22 5. A true and correct copy of the meet and confer letter sent by counsel for Mr.
23 Jobs on March 10, 2008 is attached to this declaration as **Exhibit D**.


24
25 6. A true and correct copy of the meet and confer letter that was sent by Plaintiffs
26 to counsel for Mr. Jobs on March 13, 2008 is attached to this declaration as **Exhibit E**.

27 //

28 //

1 7. I declare under penalty of perjury under the laws of the State of California that
2 the foregoing is true and correct.

3
4 Executed on this 16th day of April, 2008, at La Jolla, California.

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7 Eugene R. Long, Jr.
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1 **Case No. C 08-80040 RMW (PVT)**
 2 **[Related to Case No. CV 07-3314 PSG (MANx) (C.D.Cal.)]**

3 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

4 I, Sherie Johnson, declare:

5 I am a resident of the State of California and employed in the County of San
 6 Diego, State of California. I am over the age of eighteen years, and not a party to the
 7 within action. My business address is 9404 Genesee Avenue; Suite 340; La Jolla, CA
 8 92037. On April 16, 2008 I served a true copy of the document entitled **Declaration**
 9 **of Eugene R. Long, Jr. in Support of Opposition to Motion for Protective Order**
 10 **to Quash "Apex" Deposition Subpoena** by placing it in an overnight delivery
 11 envelope or package provided by an overnight delivery carrier and addressed as
 12 below. I placed the envelope or package for collection and overnight delivery at an
 13 office or a regularly utilized drop box of the overnight delivery carrier on April 16,
 14 2008.

15 Glenn D. Pomerantz, Esq. 16 Kelly M. Klaus, Esq. 17 Kimberly D. Encinas, Esq. 18 MUNGER, TOLLES & 19 OLSON LLP 20 355 South Grand Avenue 21 Thirty-Fifth Floor Los Angeles, CA 90071 Attorneys for Defendants	Daniel S. Schechter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street; Suite 4000 Los Angeles, CA 90071 Attorneys for Non-Party Deponent Steve Jobs	George A. Riley, Esq. O'MELVENY & MYERS LLP 275 Battery Street; Suite 2600 San Francisco, CA 94111 Attorneys for Non-Party Deponent Steve Jobs
--	--	---

22 I declare under penalty of perjury that the above is true and correct.

23 Executed on April 16, 2008 at La Jolla, California.

24
 25
 26 /s/ Sherie Johnson
 27 Sherie Johnson
 28

EXHIBIT

A.

Exhibit A-3

FILED

07 JUN 13 AM 11:20
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

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Attorneys for Plaintiffs F.B.T. Productions, LLC and Em2M, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

F.B.T. PRODUCTIONS, LLC,
and Em2M, LLC,

Plaintiffs,

v.

AFTERMATH RECORDS doing
business as AFTERMATH
ENTERTAINMENT;
INTERSCOPE RECORDS;
UMG RECORDINGS, INC.; and
ARY, INC.,

Defendants.

Case No. CV 07-03314 PSG (MANx)

FIRST AMENDED COMPLAINT
FOR BREACH OF CONTRACT;
DECLARATORY JUDGMENT

JURY DEMAND

Exhibit A-4

COPY

1 Plaintiffs F.B.T. Productions, LLC, and Em2M, LLC (collectively
2 "Plaintiffs"), by and through their attorneys, for their Complaint against the
3 Defendants named above allege as follows:
4

5 I. NATURE OF THE ACTION

6
7 1. This action for breach of contract and declaratory judgment against
8 Defendants named herein arises from Defendants' failure to properly account to
9 and pay Plaintiffs royalties with respect to master recordings of the musical
10 performances by Marshall B. Mathers III professionally known as Eminem
11 ("Eminem") licensed from Defendants by various "Music Download Providers"
12 for reproduction and sale as more fully described hereinbelow (including but not
13 limited to iTunes, Buy.com, Napster, among others) and by "Mastertone
14 Providers" (including but not limited to Cingular Wireless, Sprint, T-Mobile, and
15 certain affiliates of Defendants, among others).
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19 2. This action seeks remedies for Defendants' knowing violations of the
20 terms of their agreements with Plaintiffs whereby Defendants have paid Plaintiffs
21 significantly less royalties than are owed to Plaintiffs for the licensing of the
22 master recordings to Music Download Providers and Mastertone Providers.
23
24

25 3. Plaintiffs seek damages for breach of contract. Plaintiffs further seek
26 a declaration, pursuant to 28 U.S.C. §2201, that Defendants are obligated to pay
27 Plaintiffs an amount equal to fifty percent (50%) of Defendants' net receipts from
28

1 the sale of records or other uses of the master sound recordings which are licensed
2 by Defendants or Defendants' licensees to others for their manufacture and sale of
3 records or for any other uses.
4

5 4. Defendants' recording agreements with Plaintiffs require Defendants
6 to pay Plaintiffs fifty percent (50%) of all net receipts received by Defendants on
7 masters licensed by Defendants or Defendants' licensees to others for
8 their manufacture and sale of records or for any other use.
9
10

11 5. Rather than paying Plaintiffs fifty percent (50%) of the net receipts
12 paid to Defendants for the licensed digital uses of master recordings featuring
13 Eminem's performances, Defendants wrongfully (a) calculate royalties by applying
14 an album royalty rate to an artificially imputed retail price of the download without
15 a packaging or configuration deduction; (b) incorrectly compute domestic digital
16 download sales using a fabricated retail price of 130% of wholesale price rather
17 than the retail price actually charged to consumers by the licensees; and (c) apply
18 territory reductions to so-called foreign digital download sales without an
19 economic or contractual basis for such reductions.
20
21

22 6. As a result of Defendants' intentional past and continuing contractual
23 breaches, Plaintiffs have been damaged by the loss of royalty payments in excess
24 of the jurisdictional limits of this Court which royalty payments Defendants have
25 retained for their own benefit.
26
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Exhibit A-6

8. Plaintiff F.B.T. Productions LLC ("F.B.T.") is a Michigan limited liability company. The only members comprising F.B.T. are Mark Bass and Jeff Bass. Both members are natural persons and United States citizens. Both members are residents of Michigan and intend to reside in Michigan permanently, and therefore are domiciled in Michigan. F.B.T. is a citizen of Michigan.

9. Plaintiff Em2M LLC ("Em2M") is a Michigan limited liability company. Joel Martin, a natural person, is the sole member of Em2M. Mr. Martin is a United States citizen and a resident of the State of Michigan. He intends to reside in Michigan permanently, and therefore is domiciled in Michigan. Em2M is a citizen of Michigan.

10. Defendant Aftermath Records and Aftermath Records doing business

as Aftermath Entertainment ("Aftermath") is a joint venture between three entities:

(1) Interscope Records, a California general partnership (the "Interscope Partnership"), (2) Interscope Records, an unincorporated division of UMG Recordings, Inc., a Delaware corporation authorized to do business in the State of California ("UMG"), and (3) ARY, Inc., a California corporation ("ARY"). The Interscope Records, a Partnership, is a general partnership comprised of three entities: (a) Interscope Records, an unincorporated division of UMG, (b) UMG, and (c) PRI Productions, Inc., a Delaware Corporation. Based on the citizenship of the entities of the joint venture, Aftermath Entertainment is a citizen of California and Delaware.

a. UMG is organized under the laws of the State of Delaware and is a citizen of that state, as is its unincorporated division, Interscope Records. UMG Recordings and its divisions also are citizens of the state that is UMG's principal place of business, which is California. According to its website, "UMG's corporate headquarters are located at 2220 Colorado Avenue, Santa Monica, CA 90404 and 1755 Broadway, New York, NY 10019." According to its registration on file with the California Secretary of State, UMG is registered in the State of Delaware and its offices are located at "10 Universal City Plaza, Universal City, California, 91608." Lastly, UMG's critical copyright and licensing department and its Film & TV Licensing departments are stationed in California as

1 well. On information and belief, Plaintiffs allege that UMG employs a majority of
2 its employees in California, and the majority of its executive and administrative
3 functions are performed in California because (a) at least one of its two
4 headquarters are located in California, (b) UMG's critical licensing and copyright
5 divisions are located in California, and (c) a majority of its operations, both
6 executive and administrative, take place in California.
7

8
9 b. PRI Productions, Inc., (hereinafter, "PRI") is a Delaware
10 Corporation registered to do business in California. PRI's principal place of
11 business is California. It lists its address with the California Secretary of State as
12 "10 Universal City Plaza, Universal City, CA, 91608." This address is the exact
13 same address as UMG registered with the California Secretary of State. On
14 information and belief, Plaintiffs allege that PRI is involved in the entertainment
15 and music industries and performs the majority of its operations in California in
16 concert with UMG. Additionally, Plaintiffs allege on investigation and discovery
17 that PRI has no executive and no administrative staff operating outside of
18 California. All of its operations therefore take place in California. It is a citizen of
19 California and Delaware.
20

21
22 11. Interscope Records, a Partnership, is comprised of UMG and PRI, and
23 is a citizen of Delaware and California because UMG and PRI are both citizens of
24 Delaware and California.
25
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Exhibit A-9

1 12. Interscope Records, an unincorporated division of UMG, is legally
2 indistinguishable from UMG, and its citizenship is the same as UMG. As
3 explained above, UMG is a citizen of Delaware and California.
4

5 13. ARY is a registered California Corporation. Plaintiffs allege on
6 information and belief that ARY is owned and operated solely by Andre Rommel
7 Young, Jr., professionally known as the hip-hop artist "Dr. Dre." The principal
8 place of business of ARY is California. Its registered mailing address is 10100
9 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067. ARY lists its
10 agent for service of process as Howard King of the law firm King, Holmes,
11 Paterno & Berliner, LLP, located at 1900 Avenue of the Stars, 25th Floor, Los
12 Angeles, California 90067. On information and belief, Plaintiffs allege that Mr.
13 Young lives in California and runs ARY exclusively from California. Also on
14 information and belief, Plaintiffs allege that ARY has no employees other than
15 Andre R. Young, Jr. and has no assets and no operations outside of California.
16 ARY's principal place of business is California, and ARY is a citizen of California.
17
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22 14. Defendant Aftermath is a citizen of California and Delaware.
23

24 15. For purposes of diversity jurisdiction, Defendants Aftermath, the
25 Interscope Partnership and UMG are all citizens of Delaware and California.
26 Defendant ARY, Inc., is a citizen of California. Plaintiffs, as citizens of Michigan,
27 are diverse from Defendants' citizenship.
28

Exhibit A-10

JURISDICTION AND VENUE

16. The jurisdiction of this Court is based upon 28 U.S.C. §1332 as there is complete diversity of citizenship between the parties, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs. This action for declaratory judgment is brought pursuant to 28 U.S.C. §2201 which is within the exclusive jurisdiction of federal courts pursuant to 28 U.S.C. §1331. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(a).

17. Personal jurisdiction over each of the Defendants is proper in this Court, among other reasons, on the grounds that (a) Defendants and/or Defendants' agents transact business in the State of California; (b) Defendants' wrongful conduct alleged herein occurred in the State of California and this District; and (c) the Agreements that are the subject of this action were entered into in this District.

18. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(c).

GENERAL ALLEGATIONS

19. On November 28, 1995, F.B.T. entered into an Exclusive Artist's Recording Agreement with Eminem ("1995 Agreement"). The 1995 Recording Agreement between F.B.T. and Eminem subsequently was amended on November 5, 1998, February 22, 1999 and November 28, 1999.

20. On March 9, 1998 F.B.T. and Aftermath entered into a written

Exhibit A-11

1 agreement whereby F.B.T. agreed to furnish to Aftermath the exclusive recording
2 services of "Eminem." ("March 9, 1998 Agreement") On March 9, 1998, Eminem
3 also entered into a Letter of Inducement with Aftermath whereby Eminem
4 acknowledged and approved of the agreement between F.B.T. and Aftermath for
5 Eminem's exclusive recording services. ("Letter of Inducement")
6

7
8 21. On September 27, 2000, F.B.T., Eminem and Aftermath entered into a
9 novation of the March 9, 1998 Agreement between F.B.T. and Eminem whereby
10 F.B.T. assigned all of its rights under the March 9, 1998 Agreement to Eminem,
11 Eminem assumed all of F.B.T.'s rights and obligation to Aftermath, and Aftermath
12 assumed F.B.T.'s obligations to Eminem so that Eminem would have a direct
13 relationship with Aftermath effective September 27, 2000 ("Novation"). Pursuant
14 to the Novation, F.B.T. irrevocably directed Aftermath to compute, account and
15 pay directly to Joel Martin, twenty-five percent (25%) of the monies payable to
16 F.B.T. under the Novation at the same times and on the same basis as Aftermath
17 accounts to F.B.T. All parties expressly agreed Joel Martin is a third party
18 beneficiary under the Novation.
19

20
21 22. Pursuant to the terms of the Novation, among other things, F.B.T.
22 remained an income participant with respect to all master recordings released by
23 Aftermath under the Novation and to which F.B.T. would have had rights prior to
24 the execution of the Novation (for purposes of this Complaint, the "Eminem
25
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1 Masters"). Further, pursuant to the terms of the Novation, the 1995 Recording
2 Agreement with its three subsequent modifications as well as the March 9, 1998
3 Agreement and Letter of Inducement were affirmed by the parties. One of the
4 terms of the Novation provided that the royalties owed by Aftermath pursuant
5 thereto were to be divided between F.B.T. and Eminem.
6

7
8 23. On or about August 22, 2003 and effective as of July 2, 2003, a new
9 agreement was entered into between Aftermath and Eminem regarding, among
10 other things, the Eminem Masters ("2003 Agreement"). Pursuant to the terms of
11 the 2003 Agreement, all "Prior Agreements" are affirmed expressly including
12 (a) the 1995 Recording Agreement and amendments thereto; (b) the March 9, 1998
13 Agreement and Letter of Inducement; and (c) the September 27, 2000 Novation.
14

15
16 24. On September 20, 2004, Joel Martin assigned all of his interests in
17 and to the 2000 Novation and under the 2003 Agreement to Em2M LLC, and all
18 payments and accountings otherwise due to Joel Martin thereafter were due to be
19 made by Defendants to Em2M LLC.
20

21
22 25. On November 1, 2004, F.B.T. and Eminem, on the one hand, and
23 Aftermath, on the other hand, entered into a written modification of the Novation.
24 ("2004 Amendment").
25

26
27 26. Pursuant to the terms of the foregoing agreements referenced
28 hereinabove, F.B.T. and Eminem caused certain recorded performances of Eminem

1 to be delivered to Defendants, and Defendants agreed to manufacture, distribute,
2 sell, and license for sale and distribution those master recordings in various
3 configurations throughout the Universe.
4

5 27. Plaintiffs have each performed their respective material obligations
6 pursuant to the terms of each of the agreements referenced hereinabove.
7

8 28. Pursuant to the terms of the March 9, 1998 Agreement and the 2003
9 Agreement, Defendants were to provide certain remuneration to Plaintiffs,
10 including royalties, and to furnish Plaintiffs with semi-annual royalty accounting
11 statements setting forth the computations of each Plaintiff's entitlement to royalties
12 for the commercial exploitation of the Eminem Masters, which statements were to
13 be accompanied by any royalty payments due.
14

15 29. Pursuant to the terms of the March 9, 1998 Agreement and the 2003
16 Agreement, Defendants agreed to pay certain royalties as follows: "On masters
17 licensed by us or our Licensees to others for their manufacture and sale of records
18 or for any other use, your royalty shall be an amount equal to fifty percent (50%)
19 of our net receipts from the sale of those records or from those other uses of the
20 masters." The "other uses" of the Eminem Masters include, without limitation,
21 Defendants, or Defendants' [L]icensees, licensing to various Music Download
22 Providers and Mastertone Providers for digital uses, including digital downloads,
23 digital streaming and mastertones. The identities of each of the Music Download
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1 Providers and Mastertone Providers are known exclusively to Defendants.

2 30. Under the agreements entered into between Plaintiffs and Defendants,
3 Defendants were obligated to act in good faith in their dealings with Plaintiffs and
4 to render accurate royalty accounting statements, and to properly credit and
5 account for the royalties generated by the commercial exploitation of the Eminem
6 Masters.
7

8 31. During the period January 1, 2002 to present, Defendants or
9 Defendants' licensees have licensed the Eminem Masters to various Music
10 Download Providers including but not limited to iTunes, Buy.com, Napster, among
11 others, and Mastertone Providers (including but not limited to Cingular Wireless,
12 Sprint, T-Mobile, and certain affiliates of Defendants, among others).
13

14 32. Upon information and belief, Defendants' agreements with the Music
15 Download Providers and Mastertone Providers involve the licensing of the
16 Eminem Masters to such Music Download Providers and Mastertone Providers for
17 sale in the form of digital music files which is encompassed in the definition of
18 "other uses of the masters" as set forth in the March 9, 1998 Agreement and the
19 2003 Novation.
20

21 33. In 2005, F.B.T. and Eminem retained an accounting firm to review the
22 accounting records of Defendants and to perform a royalty audit on behalf of
23 Plaintiffs for the periods January 1, 2002 through and including June 30, 2005. On
24

1 February 10, 2006, the accounting firm submitted its audit report to Defendants.
2 As a result, the February 10, 2006 audit showed, among other things, that
3 Plaintiffs, collectively, have been underpaid by Defendants for the digital uses in
4 an amount in excess of \$650,000.
5

6
7 **FIRST CAUSE OF ACTION**
8 **(BREACH OF CONTRACT)**

9 34. Plaintiffs reallege each and every allegation in Paragraphs 1 through
10 33 hereof as if fully set forth herein.

11 35. Defendants have failed to comply with the terms of the March 9, 1998
12 Agreement and the 2003 Agreement by failing to account and pay Plaintiffs fifty
13 percent (50%) of Defendants' net receipts from the digital uses of the Eminem
14 Masters by the Music Download Providers and Mastertone Providers. Defendants
15 apply an incorrect formula for calculating royalties with respect to those royalties
16 to be paid to Plaintiffs which results in Plaintiffs collectively receiving an average
17 royalty of approximately twelve percent (12%) instead of the fifty percent (50%)
18 required by the terms of the agreements.
19

20 36. On February 21, 2007, and pursuant to paragraph 15(b) of the March
21 9, 1998 Agreement and the 2003 Agreement, Plaintiffs sent written notice to
22 Defendants by certified mail, return receipt requested, advising Defendants of their
23 breach of said agreements and requesting that Defendants cure the breach within
24 thirty (30) days after the date of the notice.
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Exhibit A-16

37. Despite said notice, Defendants have failed and refused to cure the breach and continue to incorrectly calculate royalties in violation of the March 9, 1998 Agreement and 2003 Agreement. As a result of Defendants' improper calculation of royalties, Defendants have further breached said agreements by their failure (a) to account properly, (b) to credit and pay the correct amount of royalties due to Plaintiffs; and (c) to render royalty statements reflecting the correct amount of royalties due to Plaintiffs.

38. By reason of the foregoing and other acts not presently known by Plaintiffs, Defendants have knowingly and materially breached its contractual obligations to Plaintiffs under the March 9, 1998 Agreement and the 2003 Agreement, and wantonly have disregarded the rights of Plaintiffs.

39. Pursuant to the terms of the 2003 Agreement, should any party institute any action or proceeding at law or in equity to enforce any provision of the 2003 Agreement, including an action for declaratory relief, or for damages by reason of an alleged breach of any provision of the 2003 Agreement, or otherwise in connection with the 2003 Agreement or any of its provisions, the prevailing party is entitled to recover from the non-prevailing party reasonable and actual attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

40. As a result of the wrongful conduct of Defendants alleged

Exhibit A-17

1 hereinabove, Plaintiffs have been damaged in an amount to be determined at the
2 time of trial, which upon information and belief is well in excess of one million
3 dollars (\$1,000,000) for the digital uses.

4
5 **SECOND CAUSE OF ACTION**
6 **(DECLARATORY JUDGMENT)**

7 41. Plaintiffs reallege each and every allegation in Paragraphs 1 through
8
9 40 hereof as if fully set forth herein.

10 42. Pursuant to 28 U.S.C. §2201, this Court may declare the rights and
11 other legal relations of any interested party seeking such declaration whether or not
12 further relief is, or could be, sought. Any such declaration shall have the force and
13 effect of a final judgment or decree and shall be reviewable as such.
14

15 43. Plaintiffs contend, and seek a declaration, that, pursuant to the March
16 9, 1998 Agreement and the 2003 Agreement, Defendants are obligated to pay
17 Plaintiffs, collectively, fifty percent (50%) of Defendants' net receipts derived
18 from the licensing by Defendants or Defendants' Licensees to others "for their
19 manufacture and sale of records or for any other uses" of the Eminem Masters,
20 including, without limitation, Music Download Providers and Mastertone
21 Providers, the identities of which are known exclusively by Defendants.
22 Defendants deny they have such an obligation under said agreements.
23

24 44. Plaintiffs have no adequate remedy at law.

25 45. By reason of the foregoing, there is a present controversy between
26
27
28

1 Plaintiffs and Defendants for which a declaratory judgment should be entered
2 determining that the March 9, 1998 Agreement and the 2003 Agreement obligates
3 Defendants to pay Plaintiffs, collectively, fifty percent (50%) of Defendants' net
4 receipts from the licensing by Defendants or Defendants' Licensees of the Eminem
5 Masters to Music Download Providers and Mastertone Providers for sale.
6
7

8 PRAYER FOR RELIEF

9 WHEREFORE, Plaintiffs demand a jury trial against Defendants on those
10 matters to be determined by a jury and further pray for judgment against
11 Defendants, and each of them, as follows:
12

13 1. On the First Cause of Action, judgment awarding Plaintiffs
14 compensatory damages, the exact amount is to be determined at the time of trial;
15

16 2. On the Second Cause of Action, an order and judgment declaring that
17 the March 9, 1998 Agreement and the 2003 Agreement obligates Defendants to
18 pay Plaintiffs, collectively, fifty percent (50%) of Defendants' net receipts from the
19 licensing by Defendants or Defendants' Licensees to Music Download Providers,
20 Mastertone Providers, and others for digital and other licensed uses of the Eminem
21 Masters, including, without limitation, digital downloads, digital streaming and
22 digital mastertones;
23
24

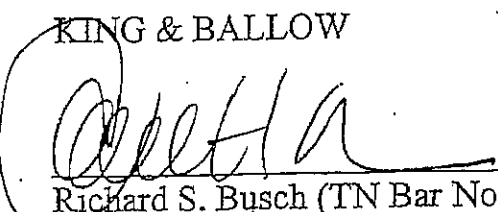
25 3. An award of reasonable and actual attorneys' fees and costs for
26 services rendered to Plaintiffs in this action;
27
28

4. An award of pre- and post-judgment interest;
5. Such other and further relief as the Court deems just and proper.

DATED: June 12, 2007

Respectfully submitted,

KING & BALLOW



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Pro hac vice pending

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Attorneys for Plaintiffs

Exhibit A-20

EXHIBIT

B.

Thoughts on Music

Steve Jobs
February 6, 2007

With the stunning global success of Apple's iPod music player and iTunes online music store, some have called for Apple to "open" the digital rights management (DRM) system that Apple uses to protect its music against theft, so that music purchased from iTunes can be played on digital devices purchased from other companies, and protected music purchased from other online music stores can play on iPods. Let's examine the current situation and how we got here, then look at three possible alternatives for the future.

To begin, it is useful to remember that all iPods play music that is free of any DRM and encoded in "open" licensable formats such as MP3 and AAC. iPod users can and do acquire their music from many sources, including CDs they own. Music on CDs can be easily imported into the freely-downloadable iTunes jukebox software which runs on both Macs and Windows PCs, and is automatically encoded into the open AAC or MP3 formats without any DRM. This music can be played on iPods or any other music players that play these open formats.

The rub comes from the music Apple sells on its online iTunes Store. Since Apple does not own or control any music itself, it must license the rights to distribute music from others, primarily the "big four" music companies: Universal, Sony BMG, Warner and EMI. These four companies control the distribution of over 70% of the world's music. When Apple approached these companies to license their music to distribute legally over the Internet, they were extremely cautious and required Apple to protect their music from being illegally copied. The solution was to create a DRM system, which envelopes each song purchased from the iTunes store in special and secret software so that it cannot be played on unauthorized devices.

Apple was able to negotiate landmark usage rights at the time, which include allowing users to play their DRM protected music on up to 5 computers and on an unlimited number of iPods. Obtaining such rights from the music companies was unprecedented at the time, and even today is unmatched by most other digital music services. However, a key provision of our agreements with the music companies is that if our DRM system is compromised and their music becomes playable on unauthorized devices, we have only a small number of weeks to fix the problem or they can withdraw their entire music catalog from our iTunes store.

To prevent illegal copies, DRM systems must allow only authorized devices to play the protected music. If a copy of a DRM protected song is posted on the Internet, it should not be able to play on a downloader's computer or portable music device. To achieve this, a DRM system employs secrets. There is no theory of protecting content other than keeping secrets. In other words, even if one uses the most sophisticated cryptographic locks to protect the actual music, one must still "hide" the keys which unlock the music on the user's computer or portable music player. No one has ever implemented a DRM system that does not depend on such secrets for its operation.

The problem, of course, is that there are many smart people in the world, some with a lot of time on their hands, who love to discover such secrets and publish a way for everyone to get free (and stolen) music. They are often successful in doing just that, so any company trying to protect content using a DRM must frequently update it with new and harder to discover secrets. It is a cat-and-mouse game. Apple's DRM system is called FairPlay. While we have had a few breaches in FairPlay, we have been able to successfully repair them through updating the iTunes store software, the iTunes jukebox software and software in the iPods themselves. So far we have met our commitments to the music companies to protect their music, and we have given users the most liberal usage rights available in the industry for legally downloaded music.

With this background, let's now explore three different alternatives for the future.

The first alternative is to continue on the current course, with each manufacturer competing freely with their own "top to bottom" proprietary systems for selling, playing and protecting music. It is a

very competitive market, with major global companies making large investments to develop new music players and online music stores. Apple, Microsoft and Sony all compete with proprietary systems. Music purchased from Microsoft's Zune store will only play on Zune players; music purchased from Sony's Connect store will only play on Sony's players; and music purchased from Apple's iTunes store will only play on iPods. This is the current state of affairs in the industry, and customers are being well served with a continuing stream of innovative products and a wide variety of choices.

Some have argued that once a consumer purchases a body of music from one of the proprietary music stores, they are forever locked into only using music players from that one company. Or, if they buy a specific player, they are locked into buying music only from that company's music store. Is this true? Let's look at the data for iPods and the iTunes store - they are the industry's most popular products and we have accurate data for them. Through the end of 2006, customers purchased a total of 90 million iPods and 2 billion songs from the iTunes store. On average, that's 22 songs purchased from the iTunes store for each iPod ever sold.

Today's most popular iPod holds 1000 songs, and research tells us that the average iPod is nearly full. This means that only 22 out of 1000 songs, or under 3% of the music on the average iPod, is purchased from the iTunes store and protected with a DRM. The remaining 97% of the music is unprotected and playable on any player that can play the open formats. It's hard to believe that just 3% of the music on the average iPod is enough to lock users into buying only iPods in the future. And since 97% of the music on the average iPod was not purchased from the iTunes store, iPod users are clearly not locked into the iTunes store to acquire their music.

The second alternative is for Apple to license its FairPlay DRM technology to current and future competitors with the goal of achieving interoperability between different company's players and music stores. On the surface, this seems like a good idea since it might offer customers increased choice now and in the future. And Apple might benefit by charging a small licensing fee for its FairPlay DRM. However, when we look a bit deeper, problems begin to emerge. The most serious problem is that licensing a DRM involves disclosing some of its secrets to many people in many companies, and history tells us that inevitably these secrets will leak. The Internet has made such leaks far more damaging, since a single leak can be spread worldwide in less than a minute. Such leaks can rapidly result in software programs available as free downloads on the Internet which will disable the DRM protection so that formerly protected songs can be played on unauthorized players.

An equally serious problem is how to quickly repair the damage caused by such a leak. A successful repair will likely involve enhancing the music store software, the music jukebox software, and the software in the players with new secrets, then transferring this updated software into the tens (or hundreds) of millions of Macs, Windows PCs and players already in use. This must all be done quickly and in a very coordinated way. Such an undertaking is very difficult when just one company controls all of the pieces. It is near impossible if multiple companies control separate pieces of the puzzle, and all of them must quickly act in concert to repair the damage from a leak.

Apple has concluded that if it licenses FairPlay to others, it can no longer guarantee to protect the music it licenses from the big four music companies. Perhaps this same conclusion contributed to Microsoft's recent decision to switch their emphasis from an "open" model of licensing their DRM to others to a "closed" model of offering a proprietary music store, proprietary jukebox software and proprietary players.

The third alternative is to abolish DRMs entirely. Imagine a world where every online store sells DRM-free music encoded in open licensable formats. In such a world, any player can play music purchased from any store, and any store can sell music which is playable on all players. This is clearly the best alternative for consumers, and Apple would embrace it in a heartbeat. If the big four music companies would license Apple their music without the requirement that it be protected with a DRM, we would switch to selling only DRM-free music on our iTunes store. Every iPod ever made will play this DRM-free music.

Why would the big four music companies agree to let Apple and others distribute their music without using DRM systems to protect it? The simplest answer is because DRMs haven't worked, and may

never work, to halt music piracy. Though the big four music companies require that all their music sold online be protected with DRMs, these same music companies continue to sell billions of CDs a year which contain completely unprotected music. That's right! No DRM system was ever developed for the CD, so all the music distributed on CDs can be easily uploaded to the Internet, then (illegally) downloaded and played on any computer or player.

In 2006, under 2 billion DRM-protected songs were sold worldwide by online stores, while over 20 billion songs were sold completely DRM-free and unprotected on CDs by the music companies themselves. The music companies sell the vast majority of their music DRM-free, and show no signs of changing this behavior, since the overwhelming majority of their revenues depend on selling CDs which must play in CD players that support no DRM system.

So if the music companies are selling over 90 percent of their music DRM-free, what benefits do they get from selling the remaining small percentage of their music encumbered with a DRM system? There appear to be none. If anything, the technical expertise and overhead required to create, operate and update a DRM system has limited the number of participants selling DRM protected music. If such requirements were removed, the music industry might experience an influx of new companies willing to invest in innovative new stores and players. This can only be seen as a positive by the music companies.

Much of the concern over DRM systems has arisen in European countries. Perhaps those unhappy with the current situation should redirect their energies towards persuading the music companies to sell their music DRM-free. For Europeans, two and a half of the big four music companies are located right in their backyard. The largest, Universal, is 100% owned by Vivendi, a French company. EMI is a British company, and Sony BMG is 50% owned by Bertelsmann, a German company. Convincing them to license their music to Apple and others DRM-free will create a truly interoperable music marketplace. Apple will embrace this wholeheartedly.

EXHIBIT

C.

AO 88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
United States District Court
Northern District of California

F.B.T. Productions, LLC, et al.

v.

Aftermath Records, et al.

SUBPOENA IN A CIVIL CASE
Case No. CV 07-3314 PSG (MANx)
Central District of California

TO: Steve Jobs, CEO Apple, Inc.
c/o Daniel S. Schechter, Esq.
Colin B. Vandell, Esq.
Latham & Watkins, LLP
644 West Fifth Street
Suite 4000
Los Angeles, CA 90071-2007

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☒ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

March 27, 2008
9:00 AM P.S.T.

Latham & Watkins, LLP
140 Scott Drive
Menlo Park CA 94025

PLACE OF DEPOSITION

DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

PLACE

DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) DATE

Richard S. Busch by *MRB*

Plaintiff

3/3/08

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Richard S. Busch, Esq.
King & Ballow
315 Union Street
1100 Union Street Plaza
Nashville, TN 37201
(615) 259-3456

Exhibit C-26

Attorney or Party without Attorney: RICHARD S. BUSCH, ESQ. KING & BALLOU 9404 GENESEE AVE SUITE 340 LA JOLLA, CA 92037 Telephone No: 858-597-6000				For Court Use Only	
Attorney for: Plaintiff				Ref. No. or File No.:	
Insert name of Court, and Judicial District and Branch Court: United States District Court Northern District Of California					
Plaintiff: P.B.T. PRODUCTIONS, LLC Defendant: AFTERMATH RECORDS					
PROOF OF SERVICE SUBPOENA IN A CIVIL		Hearing Date: Thu, Mar. 27, 2008	Time: 9:00AM	Dept/Div:	Case Number: CV07-3314 PSG (MANx)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUBPOENA IN A CIVIL CASE; NOTICE OF DEPOSITION OF STEVE JOBS.
3. a. Party served: DANIEL S. SCHECTER, ESQ., COLIN B. VANDELL, ESQ.
 b. Person served: LUZ OSIRO, AUTHORIZED TO ACCEPT SERVICE.
4. Address where the party was served: LATHAM & WATKINS, LLP
 644 WEST FIFTH STREET
 SUITE 4000
 LOS ANGELES, CA 90071
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on: Mon., Mar. 03, 2008 (2) at: 4:40PM
 - b. I received this subpoena for service on: Monday, March 03, 2008
6. Witness fees were not demanded or paid.
7. Person Who Served Papers:
 - a. MANUEL ROMERO

Recoverable Cost Per CCP 1033.5(a)(4)(B)

d. The Fee for Service was:

e. I am: (3) registered California process server

(i) Employee

(ii) Registration No.:

(iii) County:

Los Angeles

**First Legal Support Services**

ATTORNEY SERVICES

 1511 BEVERLY BOULEVARD
 Los Angeles, CA 90026
 (213) 250-1111, FAX (213) 250-1197

8. I declare under penalty of perjury under the laws of the State of California and under the laws of the United States Of America that the foregoing is true and correct.

Date: Tue, Mar. 11, 2008

 (MANUEL ROMERO) 911364.richus.118871

CERTIFICATE OF SERVICESTATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I, Sherie Johnson, declare:

I am employed in the County of San Diego, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is 9404 Genesee Avenue; Suite 340; La Jolla, CA 92037. On March 3, 2008, I instructed First Legal Support Services to personally serve a true copy of the attached documents entitled **NOTICE OF DEPOSITION OF STEVE JOBS** and **SUBPOENA IN A CIVIL CASE TO STEVE JOBS** upon:

Glenn D. Pomerantz, Esq. Kelly M. Klaus, Esq. Kimberly D. Encinas, Esq. MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue, 35 th Floor Los Angeles, CA 90071-1560 Attorneys for Defendants	Daniel S. Schechter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street, Suite 4000 Los Angeles, CA 90071-2007 On behalf of Steve Jobs
---	---

I also instructed First Legal Support Services to prepare a Proof of Personal Service.

I also served a true copy of the attached documents entitled **NOTICE OF DEPOSITION OF STEVE JOBS** and **SUBPOENA IN A CIVIL CASE TO STEVE JOBS** by placing same in an addressed sealed envelope clearly labeled to identify the persons being served at the address shown below and placed said envelope for collection with the United States Postal Service located at 9404 Genesee Avenue; La Jolla, California 92037, on March 3, 2008, following ordinary business practices:

Glenn D. Pomerantz, Esq. Kelly M. Klaus, Esq. Kimberly D. Encinas, Esq. MUNGER, TOLLES & OLSON LLP 355 South Grand Avenue Thirty-Fifth Floor Los Angeles, CA 90071-1560 Attorneys for Defendants	Daniel S. Schechter, Esq. Colin B. Vandell, Esq. LATHAM & WATKINS 633 West Fifth Street, Suite 4000 Los Angeles, CA 90071-2007 On behalf of Steve Jobs
---	---

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed on March 3, 2008, at La Jolla, California.

Sherie Johnson
Sherie Johnson

King &
Ballow

PROOF OF SERVICE

CASE # CV 07-03314 PSG (MAND)

Exhibit C-28

31

EXHIBIT

D.

Daniel Scott Schecter
Direct Dial: (213) 891-8679
daniel.schecter@lw.com

633 West Fifth Street, Suite 4000
Los Angeles, California 90071-2007
Tel: +213.485.1234 Fax: +213.891.8763
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Barcelona	New Jersey
Brussels	New York
Chicago	Northern Virginia
Frankfurt	Orange County
Hamburg	Paris
Hong Kong	San Diego
London	San Francisco
Los Angeles	Shanghai
Madrid	Silicon Valley
Milan	Singapore
Moscow	Tokyo
Munich	Washington, D.C.

March 10, 2008

VIA EMAIL AND FEDERAL EXPRESS

Richard S. Busch, Esq.
King & Ballow
315 Union Street, Suite 1100
Nashville, Tennessee 37201

Paul H. Duvall, Esq.
King & Ballow
9404 Genesee Avenue, Suite 340
La Jolla, California 92037

Mark L. Block, Esq.
Christensen, Glaser, Fink, Jacobs, Weil & Shapiro LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067

Re: F.B.T. Prods. LLC v. Aftermath Records - Case No. CV07-3314 PSG (MANx)

Dear Counsel:

We write pursuant to Northern District of California Local Rule 37-1 to request a conference of counsel in advance of the filing of a motion for protective order with respect to Plaintiffs' deposition subpoena directed to Steve Jobs.

Plaintiffs' attempt to take the deposition of Mr. Jobs is absolutely precluded as a matter of law. The proposed deposition is a classic example of an "apex" deposition and is particularly inappropriate given that Apple Inc. is not a party to this action. Courts consistently have barred efforts to depose high-ranking corporate officials. See, e.g., Thomas v. Int'l Bus. Machs., 48 F.3d 478, 483 (10th Cir. 1995). This authority is particularly compelling given that in each of these cases the court barred an apex deposition of a high-ranking executive of one of the parties or a party subsidiary.

During the meet and confer process for Plaintiffs' subpoena for documents to Apple, Plaintiffs conveyed that their purported justification for seeking Mr. Jobs' deposition is his essay "Thoughts On Music." Plaintiffs' apparent obsession with Mr. Jobs' comments simply cannot justify the apex deposition of a non-party witness, and smacks of harassment.

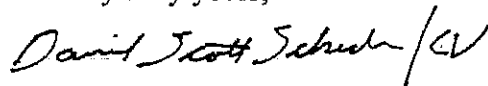
Exhibit D-30

LA\1833911

LATHAM & WATKINS LLP

Please confirm a time for a conference call so that we can discuss this matter promptly. I can be reached at (213) 891-8679.

Very truly yours,

A handwritten signature in cursive script, reading "Daniel Scott Schecter / CV".

Daniel Scott Schecter
of LATHAM & WATKINS LLP

Exhibit D-31

EXHIBIT

E.

KING & BALLOW

LAW OFFICES

LA JOLLA EASTGATE

9404 GENESEE AVENUE, SUITE 340
LA JOLLA, CALIFORNIA 92037-1355

TELEPHONE: 858/597-6000

FACSIMILE: 858/597-6008

www.kingballow.com

March 13, 2008

VIA EMAIL AND FIRST CLASS MAIL

daniel.schechter@lw.com

Daniel Scott Schechter, Esq.
Latham & Watkins
633 West Fifth Street, Suite 4000
Los Angeles, CA 90071-2007

Re: *F.B.T. Prods. LLC v. Aftermath Records* - Case No. CV07-3314 PSG(MANx)

Dear Mr. Schechter:

I write to you in response to your letter of March 10, 2008 pursuant to Northern District of California Local Rule 37-1 regarding our request to depose Steve Jobs, of Apple, Inc. On March 3, 2008, we served a notice of deposition for Mr. Jobs on your law firm. Mr. Jobs' deposition is currently scheduled for March 27, 2008.

Your letter opposes the taking of Mr. Jobs' deposition and states that the deposition is "absolutely precluded as a matter of law." Your letter cites to the case of Thomas v. Int'l Bus. Machs., a Tenth Circuit case dealing with the "apex" deposition. Thomas v. IBM is distinguishable from this matter for several reasons: 1) the Plaintiff in Thomas violated local rules concerning time requirements for noticing a deposition, 2) Akers, the Chairman of IBM's Board of Directors, provided a declaration stating that he did not have any personal knowledge regarding the matters at issue in the case, and 3) the Plaintiff had not made attempts to gather the information using less intrusive means. Thomas is also distinguishable because it refers to the deposition of an officer of a party defendant. In this case, Apple is a third party. Moreover, as you implicitly recognize, there is no Ninth Circuit case law on this issue.

Recent district court cases within the Ninth Circuit have discussed the "apex" deposition rule. In WebSide Story v. NetRatings, Inc., the Southern District of California stated that there were two prongs to the "apex" rule: 1) Whether or not the high-level deponent has unique, first hand, non-repetitive knowledge of the facts at issue, and 2) whether the party seeking the deposition has exhausted other less intrusive discovery methods. WebSide Story v. NetRatings, Inc., 2007 U.S. Dist. Lexis 20481, (S.D. Cal. 2007).

Exhibit E-33

NASHVILLE OFFICE:

1100 UNION STREET PLAZA • 315 UNION STREET • NASHVILLE, TENNESSEE 37201 • TELEPHONE: 615/259-3456 • FACSIMILE: 615/254-7907

Daniel Scott Schechter, Esq.

March 13, 2008

Page 2

In Celerity, Inc. v. Ultra Clean Holding, Inc., the Northern District of California discussed the "apex" rule in the context of a deposition of a notice of deposition to CEO of Celerity. Celerity, Inc. v. Ultra Clean Holding, Inc., 2007 U.S. Dist. Lexis 8295 (N.D. Cal. 2007). In that case, the court noted that the "apex" rule was not an absolute bar to the deposition of the CEO and stated that Ultra Clean could renew its notice of deposition after less intrusive methods failed to provide the discovery being sought.

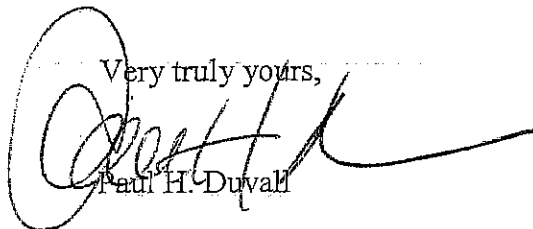
Our request to depose Mr. Jobs is distinguishable from the cases discussed above. In this case, we have given proper notice in compliance with the local rules. Less intrusive methods are not available as Rule 33, Federal Rules of Civil Procedure limits interrogatories to being served only on parties to the litigation. In this matter, Apple is a non-party. Furthermore, we have attempted to use subpoenas *duces tecum* to obtain related documents. As you know from previous meet and confer sessions, you have adamantly refused to either locate and/or produce such documents.

Depositions of lower level Apple employees would not be sufficient. The discovery that we are seeking is based on an essay authored by Mr. Jobs himself in which he discussed his thoughts on the current state of the industry with regards to Digital Rights Management. As a result, Mr. Jobs' knowledge is uniquely personal and not available by deposing a lower-level employee.

You stated in your letter that our deposition notice to Mr. Jobs "smacks of harassment." This is not the case. Typically, the "apex" rule is invoked in cases where one party seeks to depose a high ranking official of the other party who has limited knowledge of the relevant facts, where there is at least an implied improper strategic purpose. Apple is not a party to this litigation. As a result, the deposition subpoena served on Mr. Jobs serves no improper (or even any) strategic purpose. We simply need Mr. Jobs to testify concerning the essay that he personally authored and his statements which are directly relevant and essential to this case.

In an effort to come to a reasonable accord, we would agree to reasonable limitations concerning the length and the location of the depositions. If Mr. Jobs does not appear at his noticed deposition, we will move to compel and seek sanctions. Please contact me to confer regarding this dispute in accordance with the requirements of Local Rule 37-1. I can be reached at (858) 597-6000.

Very truly yours,


Paul H. Duvall

PHD:sj